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No. 96-1930

Supreme Court, U.S.
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IN THE

UNITED STATES SUPREME COURT
OCTOBER TERM, 1996

CLARK GAREN,

Petitioner,

vs.

SUPREME COURT OF WASHINGTON,
WASHINGTON STATE BAR ASSOCIATION,

Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO COMPEL ADMISSION TO STATE BAR OF WASHINGTON

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TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES:

Konigsberg vs. State Bar of California, (1957), 77 S. Ct. 722, 33 U.S. 252, 1 L. Ed. 2d. 810 — 1,

UNITED STATES CODES:

28 U.S.C. 1257(a) — 1

28 U.S.C. 1275(a) — 1

I. JURISDICTION

This Court has jurisdiction over this matter under 28 U.S.C. 1257(a) because this is a final judgment rendered by the highest court of a state where a title, right, privilege, or immunity is claimed under the Constitution of the United States. The Petition cites the wrong Code section, but also cites other authorities establishing jurisdiction. Respondent concedes that this Court does have jurisdiction under 28 U.S.C. 1275(a). Furthermore. this Court considers any issue raised before the lower court, including one presented ineptly. (Konigsberg vs. State Bar of California, 1957 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d. 810)

II PETITIONER HAS PROVED THAT HE IS VICTIM OF DISCRIMINATION

The essence of the Respondents' opposition is that Petitioner did not prove discrimination.

The Respondent conducts these proceedings in secret and without public disclosure. Neither applicants or members of the public are told why some applicants are admitted and why some applicants are rejected. So, while the Respondent seeks to deprive Petitioner of review by accusing him of failing to prove discrimination, Respondents actively hide and conceal the conduct that would prove their wrongful acts of discrimination.

Respondent fails to cite one single case in which the standard used to evaluate Petitioner was applied to any other bar applicant.

Respondent correctly notes that without the dissenting opinion (which the Washington Supreme Court has kept secret from the public), Petitioner would have no proof that Respondent has discriminated against him.

Fortunately, two justices of the Washington Supreme Court were so disgusted and outraged by the blatant and unjustified discrimination perpetrated upon Petitioner by the majority that they gave proof of their wrongful discriminatory conduct both to Petitioner and to this Court.

On pages 17-18 of Appendix B to the Petition for Certiorari, Justice Sanders examined the last seven initial applicants for admission to practice law in Washington. Justice Sanders noted that the Supreme Court of Washington had just admitted applicants who:

> 1. "sold seven ounces each of cocaine and heron (Bar Applicant No. 60);
>
> 2. conspired to import and distribute marijuana and transported $[illegible]0,000 to another country (Bar Applicant No. 59);
>
> 3. engaged in vehicle tampering and shoplifting (Bar Applicant No. 58);
>
> 4. sold over a pound of cocaine to undercover officers for $30,500 in addition to possessing over a half-a-pound of cocaine (Bar Applicant No. 57);
>
> 5. furnished alcohol to a minor, delivered a controlled substance to a minor, and committed third degree sodomy with a 14-year-old girl (Bar Applicant No. 56);
>
> 6. broke into a liquor store, burglarized home, stole payroll checks, and drove under the influence (Bar Applicant No. 55);

7. possessed marijuana and attempted to commit fraud (Bar Applicant No. 54).

Justice Sanders then challenged the majority as follows:

> "It is our charge to measure Mr. Garen's application by the standard we have applied to others. I would be most interested to hear any explanation from the majority as to how Mr. Garen has fallen below that standard we have set in prior proceedings enumerated above. *Cum tacent, clamant.*"

How did the majority respond to this challenge from the dissenting justices?

Did they publish a majority opinion explaining their rationale?

Did they publish a majority opinion citing as precedent another applicant who was evaluated in the same manner?

No! **What they did was to maintain a code of silence by refusing to even give these Justices permission to even publish their dissent!**

If this dissent does not in and of itself establish irrefutable and conclusive evidence of discrimination against Petitioner, it certainly does establish a prima facia case of discrimination. It certainly does provide a factual basis for this Court to grant Certiorari and force the Respondent *justify* their actions and keep them from hiding behind a conspiracy of silence!

III CONCLUSION

There is no question that your Petitioner was the victim of discrimination. The question is whether this Court is going to become a party to discrimination by condoning it!

There was a time when this Court condoned discrimination. There was a time when this Court permitted separate but equal schools with full knowledge that the minority schools were not equal at all! There was even a time when this Court condoned slavery. Most of us thought these times had vanished long ago.

The late Chief Justice Earl Warren recognized that this Court was the last place of refuge for the less fortunate, the people in society who suffer, and the disadvantaged!

The late Chief Justice Earl Warren recognized that this Court was charged by the Constitution make certain that the government was fair to its citizens!

When our founding fathers created our system of self-government and experimented, for the first time, with the power to govern coming from We, The People, they were concerned that democracy would vest the majority with the *power* to deny the rights of the minority. Our founding fathers sought to protect the minority from abuse by creating the Bill of Rights and establishing it as the basic and essential character of each and the every American. Our founding fathers hoped that we, as American citizens, would learn to give our Bill of Rights the same reverence we give to our God.

Our founding fathers entrusted ***you***, the Justices of the Supreme Court, to be the primary keepers of our Bill of Rights. ***You***, as the Justices of the Supreme Court, have primary responsibility to protect the minority from the majority. ***You***, as the Justices of the Supreme Court, have an obligation to maintain the sanctity of the Bill of Rights by forcing everyone to recognize and abide by it.

When you permit the states to violate the Bill of Rights, you plant the seeds of the destruction of our entire society. While denying admission to practice to one unimportant lawyer will certainly not destroy the county, you cannot do this without telling Americans that the Bill of Rights is not important anymore! You cannot do this without telling American that the Bill of Rights no longer protects the minorities from abuse of power by the majority! When you tell Americans that our Bill of Rights is not important and does not have to be followed anymore, you take away from us the one thing that identifies us as Americans. You take away from us the one thing that differentiates us from the other countries and civilizations in the world. You take away the one thing that protects the minority from abuse of power by the majority. You take away our Bill of Rights!

The Petition for Writ of Certiorari should be granted.

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